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Utah Supreme Court

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David L. Wilkinson; Lawyer for Defendant-Appellant ROBERT B. HANSEN; Attorney for Plaintiff-Respondent

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IN THE SUPREME COURT OF THE

STATE OF UTAH

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| STATE OF UTAH,<br>Plaintiff-Respondent,<br>-vs-<br>FRANK VLACIL,<br>Defendant-Appellant. | : | Case No. 16863 |

# BRIEF OF RESPONDENT

APPEAL FROM THE VERDICT OF THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR CARBON COUNTY, STATE OF UTAH, THE HONORABLE BOYD BUNNELL PRESIDING.

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FILED

MAY - 8 1981

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE

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| STATE OF UTAH, | : | |
| Plaintiff-Respondent, | : | |
| -vs- | : | Case No. 16863 |
| FRANK VLACIL, | : | |
| Defendant-Appellant. | : | |

BRIEF OF RESPONDENT

## STATEMENT OF THE NATURE OF THE CASE

The appellant was convicted of violating Utah Code Annotated § 76-10-503 which prohibits the possession of a dangerous weapon by a person who is not a citizen of the United States. At the time of the incident forming the basis of this case, the appellant was a Czechoslovakian native found to have been in possession of a firearm.

## DISPOSITION IN THE LOWER COURT

The appellant was charged by information with the commission of a third degree felony under U.C.A. § 76-10-503. The appellant was convicted of violating the provisions of this statute in a jury trial, the Honorable Boyd Bunnell of

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the Seventh Judicial District in and for Carbon County, presiding. Upon conviction, the appellant was sentenced to serve a term of confinement in the Utah State Prison, not to exceed five years.

## RELIEF SOUGHT ON APPEAL

The respondent seeks an order and judgment upholding the constitutionality of Utah Code Ann. § 76-10-503 and affirming the conviction in the lower court.

## STATEMENT OF THE FACTS

On the evening of February 21, 1979, James Cruz, intent on an evening of drinking, and socializing, took a taxi cab to the Eagle's Club in Price, Utah (T.14). As Cruz and a group of friends arrived at the club, they noticed another friend, the appellant, had already arrived (T.15). Shortly thereafter, the appellant and Cruz engaged in a heated discussion about the attendance and membership policy of the club which refuses non-members entrance after the third visit unless a commitment to join is made (T.15). The appellant had visited the club on three occasions prior to the evening of February 21, and was thus ineligible to enter without membership (T.15). The argument evolved into a fight between the two men which ended when the appellant was forcibly ejected from the club (T.16). At approximately 12:30 a.m., Cruz and the group left the club and proceeded to

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a bar owned jointly by Cruz and Ann Archibald (T.15,16). Shortly after arriving at this bar, a bullet was fired from the outside, through a window of the bar (T.19,20). Patrons at the bar looked outside and saw the appellant holding a gun (T.20). Cruz went outside in an attempt to calm the appellant (T.20,25). As Cruz approached, the appellant commanded him to stay away or he would kill him (Cruz) (T.28). After the appellant jammed the gun several times into Cruz's face (T.25), Cruz began to back away from the appellant (T.25). Cruz had backed approximately fifteen feet from the appellant when he shot Cruz through the shoulder (T.25). Later, at approximately 2:00 a.m., the appellant was arrested as he was sitting in his van (T.56,57). As police officers looked through the driver's side window of the van, the gun used in the previous shooting was discovered and seized (T.57).

ARGUMENT

POINT I

STATE AND NATIONAL CONSTITUTIONAL PROVISIONS CONCERNING THE RIGHT TO BEAR ARMS, GUARANTEE COLLECTIVE RATHER THAN INDIVIDUAL RIGHTS ALLOWING LEGISLATURES TO REGULATE THE POSSESSION OF ARMS PURSUANT TO TRADITIONAL STATE POLICE POWERS.

Utah Code Annotated § 76-10-503 states in pertinent part that:

(1) Any person who is not a citizen of the

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United States, or any person who has been convicted of any crime of violence under the laws of the United States, the State of Utah, or any other state, government, or country, or who is addicted to the use of any narcotic drug, or any person who has been declared mentally incompetent shall not own or have in his possession or under his custody or control any dangerous weapon as defined in this part. Any person who violates this section is guilty of a class A misdemeanor, and if the dangerous weapon is a firearm or sawed-off shotgun, he shall be guilty of a felony of the third degree.

The appellant, who was convicted of possession of a firearm by a person who is not a citizen of the United States, alleges that the above code section is violative of provisions of the state and national constitutions. The Second Amendment to the United States Constitution provides that, "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Correspondingly, Article I Section 6 of the Utah Constitution states: "The people have the right to bear arms for their security and defense, but the Legislature may regulate the exercise of this right by law." In the case of United States v. Miller, 307 U.S. 174 (1938), the United States Supreme Court addressed fears similar to those expressed by the appellant in the case at bar. That case concerned the National Firearms Act under which the appellant



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was convicted for transporting a sawed-off shotgun in interstate commerce. The Court examined the historical foundation of the Second Amendment and stated:

> The Constitution as originally adopted granted to the Congress power—"To provide for calling forth the Militia to execute the Laws of the Union . . .; To provide for organizing, arming, and disciplining, the Militia, and for governing such part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress." With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view.

307 U.S. at 178. In short, the Second Amendment right to keep and bear arms refers directly to the states' right to maintain a militia, but not to the right of an individual to possess a firearm. Such was the holding of the court in Stevens v. United States, 440 F.2d 144 (6th Cir. 1971):

> Since the Second Amendment right "to keep and bear Arms" applies only to the right of the State to maintain a militia and not to the individual's right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a firearm.

At 149. Accordingly, the courts have come to a general concensus that the Second Amendment guarantees a collective rather than an individual right. United States v. Warin,

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530 F.2d 103, 106 (6th Cir. 1976), cert. den. 426 U.S. 948.

Likewise, state courts when dealing with claims of unconstitutional gun control statutes, apply the Second Amendment in a manner similar to federal courts. In Harris v. State, 432 P.2d 929 (Nev. 1967), the court stated, referring to the Second Amendment's application to the Nevada gun control law: "That the amendment applies only to the Federal Government and does not restrict state action . . . The right to bear arms does not apply to private citizens as an individual right." At 930. Similarly, the court in Commonwealth v. Davis, 343 N.E.2d 847, 850 (Mass. 1976) again, referring to the Second Amendment stated:

> The chances appear remote that this amendment will ultimately be read to control the States, for unlike some other provisions of the bill of rights, this is not directed to guaranteeing the rights of individuals, but rather, as we have said, to assuring some freedom of the State forces from national interference.

The underlying basis for holding that the Second Amendment allows restrictions to be placed on the possession of firearms by individuals, can be traced to the Tenth Amendment to the United States Constitution: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Under this amendment, the

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states have the power to enact laws appropriate for protecting the health and welfare of the people. This general police power allows the state to legislate in the field of gun control. In People v. Garcia, 595 P.2d 228, 230 (Colo. 1979), the Colorado Supreme Court stated, "The right to bear arms is not absolute, and it can be restricted by the state's valid exercise of its police power." Similarly, the Nevada Supreme Court in Hardison v. State, 437 P.2d 868, 871 (Nev. 1968) noted, "[T]he Second Amendment right is not absolute. The provision only applies to the federal government, and absent federal or state constitutional restraints the authority to regulate weapons comes from a state's police powers. This is a valid subject for state regulation."

A similar holding is appropriate in the present case. Pursuant to Article I Section 6 of the Utah Constitution, "The people have the right to bear arms for their security and defense, but the Legislature may regulate the exercise of this right by law." The Utah Code section 76-10-503 is simply a manifestation of the Legislature exercising its right, pursuant to the state constitution, to regulate the people's right to bear arms. There is no question that the Legislature had the power and right to enact Utah Code Ann. 76-10-503. State v. Beorchia, 530 P.2d 813, 814

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(Utah 1974). In addressing a Fourteenth Amendment equal protection attack on the statute involved here, this Court stated: "The sale, use and possession of firearms are proper subjects of regulation by the State. The Fourteenth Amendment is not generally applied so as to restrict the exercise of police powers by the state." This Court concluded its analysis of the issues by holding:

> The statute under consideration was directed toward the safeguarding of the public peace and security and is thus a proper exercise of the police powers. It appears that the legislature determined that the possession of firearms by aliens was harmful, and we do not quarrel with the decision of that body.

At 815. Thus, not only is the disputed statute a constitutional exercise of the state's police powers, but where such powers of regulation are expressly granted to the legislature by the state constitution, this Court has given great deference to the decision of that body. Therefore, the Court's decision in the case at bar should support and follow the precedent of State v. Beorchia, supra.

The appellant distinguishes the present statute from similarly drawn statutes on the premise that the instant statute "prohibits" rather than "regulates" the possession of firearms. Such a distinction is, however, invalid when contrasted against the nature of provisions guaranteeing the

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right to bear arms. These provisions, as previously stated, confer a collective right only; no individual rights are involved. Therefore, only a statute which makes a collective prohibition may be characterized as absolutely prohibiting possession of firearms. Were this not so, a statute prohibiting the possession of firearms by persons convicted of felonies (also a class of individuals), would contain the same potential constitutional infirmity advocated by the appellant in the present case. However, statutes prohibiting the possession of firearms by felons have been unanimously upheld as a valid exercise of state police powers. Since the present statute does not collectively prohibit the possession of firearms by the people of this state, the appellant's attack must be rejected.

The appellant assails the instant statute on the ground that cases cited by this Court in Beorchia dealt with statutes promulgating qualified prohibitions, i.e., aliens are prohibited from possessing firearms except in situations of individual self-defense. It should be noted that this Court did not rely upon Ex Parte Rameriz, 226 P. 914 (Cal. 1924) and Patsone v. Pennsylvania, 232 U.S. 138 (1915), for the entire rationale of the Beorchia opinion; rather these two cases are cited to support the

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proposition that a statute such as Utah Code Ann. § 76-10-503 which is directed toward the safeguarding of the public peace and security, is the proper exercise of the police powers. 530 P.2d at 815. Since the above cases were noted for the general proposition that statutes addressed to safeguarding the public peace and security are a valid exercise of police powers to which Fourteenth Amendment restrictions are generally not applied, the superficial legal distinction mentioned by appellant is not sufficient to compel a result contrary to Beorchia.

In the event that a self-defense distinction were valid in the present case, the appellant still could not prevail since self-defense was not involved here. In other words, Utah Code Ann. § 76-10-503 is not unconstitutional as applied to the appellant since the incident which precipitated the arrest, the shooting of Cruz, was not an act of self-defense. Although, after the first shot through the window of the bar, Cruz left the bar and approached the appellant to calm him down, the appellant shot Cruz as Cruz was backing away from the appellant (T. 25,30,48). Therefore, even if the possession of a firearm by an alien should be allowed under the Utah Code for purposes of self-defense, the statute was constitutionally applied to the appellant. He has no standing to assert a cause based on the prosecution of an alien under Utah Code Ann. § 76-10-503 who may have

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peacefully or justifiably used or possessed a firearm.

## POINT II

STATE LAWS WHICH AFFECT ALIENS BY REGULATING THEIR USE AND POSSESSION OF FIREARMS, ARE NOT PREEMPTED BY THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION SINCE SUCH REGULATIONS DO NOT IMPINGE ON IMMIGRATION AND NATURALIZATION.

The appellant asserts that since Utah Code Ann. § 76-10-503 affects or in some way regulates the activities of resident aliens, it is preempted under the Supremacy Clause of Article VI, Clause 2 of the United States Constitution. The assertion continues that Congress has preempted the entire field of alien regulation, making any state regulations invalid. Appellant's reasoning is unsupported by case law or logic. Appellant recognizes that it is only in the field of immigration and naturalization that federal law dominates, but fails to demonstrate any nexus between immigration and naturalization and the type of regulation involved here. Simply stated, the prohibition against the possession of firearms by aliens has nothing to do with, nor does it affirmatively or negatively impinge upon the federal regulations concerning the immigration, naturalization, or registration of aliens. An examination of the law in this area reveals several standards used by the courts to determine whether state regulations are preempted by federal legislation. In <u>Florida Avocado Growers v. Paul</u>, 373 U.S. 132 (1962), the Court enumerated these standards:

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(1) a state regulation is preempted where an unambiguous congressional mandate exists to that effect; (2) preemption exists where the state regulation cannot be enforced without impairing federal superintedence of the field; and (3) preemption of the state regulation exists where it stands as an obstacle to the accomplishment and execution of the full purposes of Congress. Under any of these standards, Utah Code Ann. § 76-10-503 is a proper exercise of this state's police powers and is not preempted by federal legislation.

No unambiguous congressional mandate exists to preclude a state from regulating the possession of firearms by aliens; certainly the appellant has made no such showing. The appellant refers to 18 U.S.C.App. § 1201-1203 (which is attached at the end of respondent's brief) in an attempt to make the requisite showing of an unambiguous congressional mandate. However, the language contained in these sections does not satisfy the "clearly unambiguous" standard directed at the states. (i.e., in Rice v. Santa Fe Elevator Corp., 331 U 218 (1946), the Court held that an examination of the legislati history of Section 29 of the United States Warehouse Act, 7 U.S.C. § 241, et seq., combined with language stating: "[T]he power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive. . ." was sufficiently unambiguous to meet the Court's preemption requirements.) As explained in the Congressional Record, the

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federal statute was not directed at the ownership of firearms, but at the possession of firearms. 114 Cong. Rec. 14, 773-75 (1968). The Utah statute addresses the issue of ownership as well as possession. Moreover, the provisions were viewed in general as, "[N]ecessary to a coorindated attack on crime and also a good compliment to the gun-control legislation contained in title IV of this bill." 114 Cong. Rec. 16,286 (1968). In sum, Congress has not provided the mandate necessary to restrict regulation, but rather has provided a regulatory basis for gun control in general which compliments existing state regulation.

The appellant similarly fails to show that enforcement of Utah Code Ann. § 76-10-503 impairs the enforcement of federal gun control laws or any immigration and naturalization requirements. Concerning this test, the Court in Florida Avocado Growers stated: "The test of whether both federal and state regulations may operate, or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives." 373 U.S. at 142. This authority is directly contrary to the appellant's unsupported assertion that, because 18 U.S.C. App. § 1201 contains restrictions on the possession of firearms, state regulation

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in the same area must give way. Since enforcement of Section 76-10-503 in no way impairs federal immigration and naturalization regulations, or federal gun control laws, the Utah state cannot be deemed to have been preempted.

Likewise, the Utah statute does not stand as an obstacle to the purposes of Congress in the area of immigration and naturalization. In the case at bar, there is no reason to believe that immigration will be discouraged or hindered by Utah Code Ann. § 76-10-503. There is no state registration requirement as in Hines v. Davidowitz, 312 U.S. 52 (1941), there is no burden on the employment of aliens as in Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948), nor is there any other obstacle to the federal purpose of promoting immigration and naturalization. Consequently, under any of the standards presently utilized to examine preemption, the propriety of Utah Code Ann. § 76-10-503 must be upheld. This conclusion is consistent with the result in the case of DeCanas v. Bica, 424 U.S. 351 (1976). There the Court upheld the constitutionality of a state statute which prohibited an employer from knowingly employing an alien who is not entitled to lawful residence in the United States



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if such employment would have an adverse effect on lawful resident workers. In response to the argument that the state statute was preempted by the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq., the Court stated: "But the Court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se preempted by this constitutional power, whether latent or exercised." 424 U.S. at 355. The Court continued by stating that, "[S]tanding alone, the fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted to the country, and the conditions under which a legal entrant may remain." Id. at 355. The Colorado Supreme Court found this language equally applicable to a statute which prohibited resident aliens from voting in school board elections.

In Skafte v. Rorex, 553 P.2d 830, 834 (Colo. 1976), the court noted that voter qualification was a primary example of an area which the states have historically occupied. Finding no conflict between the state statute and the Immigration and Nationality Act, and no congressional intent to remove power from the states in this area, the court concluded that only a demonstration that a complete ouster of state power was



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the clear and manifest purpose of Congress, would require a conclusion of preemption. 533 P.2d at 834. Correspondingly, in the area of the exercise of state police power, the appellant has made no demonstration of congressional intent to completely eliminate the power of the state to regulate the ownership and possession of firearms by aliens. Utah Code Ann. § 76-10-503 has not been preempted and its application in this case should be affirmed.

CONCLUSION

The appellant's conviction under Utah Code Ann. § 76-10-503 was proper and should be affimred. The appellant has failed to overcome the authority of this Court's decision in State v. Beorchia, as well as the authority of other courts which have upheld similar state laws prohibiting the possession or ownership of deadly weapons by aliens. See People v. Cannizzaro, 31 P.2d 1066 (Cal. Ct. App. 1934); People v. Cordero, 122 P.2d 648 (Cal. Ct. App. 1942); and People v. Mendoza, 60 Cal.Rptr. 5 (Cal. Ct. App. 1967) (all construing a California law which was eventually repealed by the California legislature).

The Second Amendment to the United States Constitution and Article I Section 6 of the Utah Constitution confer only collective rights of firearm ownership and possession relating to the state's power to maintain a militia. Arguments that these provisions support the appellant's individual right of possession

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and ownership have been overwhlemingly rejected by the courts.

Furthermore since the appellant has failed to show congressional intent to eliminate state regulatory powers in the area of gun control through the Immigration and Nationality Act, the state statute here involved is not preempted under the Supremacy Clause of the Constitution.

Respectfully submitted,

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CERTIFICATE OF MAILING

Mailed two copies of the foregoing Brief of Respondent to Mr. D. Gilbert Athay, Attorney for Appellant, 72 East 400 South, Suite 325, Salt Lake City, Utah 84111, this 8th day of May, 1981.

Craig L. Barlow - la

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# UNLAWFUL POSSESSION OR RECEIPT OF FIREARMS

Pub. L. 90-351, title VII, §§ 1201-1203, June 19, 1968, 82 Stat. 236, as amended

TITLE REFERRED TO IN D.C. CODE

Title VII of Pub. L. 90-351 is referred to in section 6-1802 of the District of Columbia Code

### § 1201. Congressional findings and declaration

The Congress hereby finds and declares that the receipt, possession, or transportation of a firearm by felons, veterans who are discharged under dishonorable conditions, mental incompetents, aliens who are illegally in the country, and former citizens who have renounced their citizenship, constitutes—

(1) a burden on commerce or threat affecting the free flow of commerce,

(2) a threat to the safety of the President of the United States and Vice President of the United States,

(3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and

(4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution.

(As amended Pub. L. 90-618, title III, § 301(a)(1), Oct. 22, 1968, 82 Stat. 1236.)

AMENDMENTS

1968—Pub. L. 90-618 substituted "discharged under dishonorable conditions" for "other than honorably discharged".

EFFECTIVE DATE OF 1968 AMENDMENT

Section 302 of Pub. L. 90-618 provided that: "The amendments made by paragraphs (1) and (2) of subsection (a) of section 301 [amending this section and section 1202(a)(2), (b)(2) of this Appendix] shall take effect as of June 19, 1968."

### § 1202. Receipt, possession, or transportation of firearms

**(a) Persons liable; penalties for violations**

Any person who—

(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

(2) has been discharged from the Armed Forces under dishonorable conditions, or

(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

(4) having been a citizen of the United States has renounced his citizenship, or

(5) being an alien is illegally or unlawfully in the United States,

and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

**(b) Employment; persons liable; penalties for violations**

Any individual who to his knowledge and while being employed by any person who—

(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

(2) has been discharged from the Armed Forces under dishonorable conditions, or

(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

(4) having been a citizen of the United States has renounced his citizenship, or

(5) being an alien is illegally or unlawfully in the United States,

and who, in the course of such employment, receives, possesses, or transports in commerce or affecting commerce, after the date of the enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

**(c) Definitions**

As used in this title—

(1) "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country;

(2) "felony" means any offense punishable by imprisonment for a term exceeding one year, but does not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of



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a State and punishable by a term of imprisonment of two years or less;

(3) "firearm" means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; or any destructive device. Such term shall include any handgun, rifle, or shotgun;

(4) "destructive device" means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device; and includes any type of weapon which will or is designed to or may readily be converted to expel a projectile by the action of any explosive and having any barrel with a bore of one-half inch or more in diameter;

(5) "handgun" means any pistol or revolver originally designed to be fired by the use of a single hand and which is designed to fire or capable of firing fixed cartridge ammunition, or any other firearm originally designed to be fired by the use of a single hand;

(6) "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger;

(7) "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(As amended Pub. L. 90–618, title III, § 301(a)(2), (b), Oct. 22, 1968, 82 Stat. 1236.)

#### References in Text

Date of enactment of this Act, referred to in subsecs. (a) and (b) means June 19, 1968, the date of enactment of Pub. L. 90-351.

This title, referred to in subsec. (c), means title VII of Pub. L. 90-351, which is classified to sections 1201 to 1203 of this Appendix.

#### Amendments

1968—Subsec. (a)(2). Pub. L. 90-618, § 301(a)(2), substituted "dishonorable" for "other than honorable".

Subsec. (b)(2). Pub. L. 90-618, § 301(a)(2), substituted "dishonorable" for "other than honorable".

Subsec. (c)(2). Pub. L. 90-618, § 301(b), restricted definition of the term "felony" so as not to include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of a state and punishable by a term of imprisonment of two years or less.

#### Effective Date of 1968 Amendment

Amendment by section 301(a)(2) of Pub. L. 90-618 effective June 19, 1968, see section 302 of Pub. L. 90-618, set out as an Effective Date of 1968 Amendment note under section 1201 of this Appendix.

### § 1203. Exemptions

This title shall not apply to—

(1) any prisoner who by reason of duties connected with law enforcement has expressly been entrusted with a firearm by competent authority of the prison; and

(2) any person who has been pardoned by the President of the United States or the chief executive of a State and has expressly been authorized by the President or such chief executive, as the case may be, to receive, possess, or transport in commerce a firearm.

#### References in Text

This title, referred to in text, means title VII of Pub. L. 90-351, which is classified to sections 1201 to 1203 of this Appendix.

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